

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

GEORGE FRANKLIN BANKS, III,
Plaintiff

v.

TABITHA ASHLEY MACON,
Defendants

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No. 1:13-cv-01695

(Chief Judge Kane)

(Magistrate Judge Carlson)

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Presently pending before the Court is a June 26, 2013 Report and Recommendation of Magistrate Judge Carlson, recommending that Plaintiff's motion for leave to proceed in forma pauperis be granted and that Plaintiff's complaint be dismissed without prejudice. (Doc. No. 7.) As noted by Magistrate Judge Carlson, Plaintiff's complaint was filed under 42 U.S.C. § 1983 and concerns "a vaguely described domestic relations dispute," but the complaint appears to name a private party as the defendant and fails to articulate any federal constitutional or statutory right that the defendant allegedly violated. (Id. at 2.) Magistrate Judge Carlson granted Plaintiff leave to file an amended complaint within twenty days of an order addressing his Report and Recommendation. (Id. at 11.) No timely objections were filed.

On July 10, 2013, Plaintiff filed a motion for leave to file an amended complaint, stating that "Plaintiff in his original complaint wrongly filed under Federal 1983 civil complaint" and that "Plaintiff wishes the claim to be litigated under state civil complaint." (Doc. No. 9 at 1-2.) Because Plaintiff acknowledges that he wrongly initiated this action under in this Court and expresses a desire to proceed with this action in state court, the Court will deny Plaintiff's motion for leave to amend his complaint and dismiss this action without prejudice to allow

Petitioner to refile his complaint in state court if he so desires.

ACCORDINGLY, on this 23rd day of July 2013, **IT IS HEREBY ORDERED THAT:** Magistrate Judge Carlson's Report and Recommendation (Doc. No. 7) is **ADOPTED**; Plaintiff's motion for leave to proceed in forma pauperis (Doc. No. 2) is **GRANTED**; Plaintiff's motion for leave to amend his complaint (Doc. No. 9) is **DENIED**; and Plaintiff's complaint (Doc. No. 1) is **DISMISSED WITHOUT PREJUDICE** to allow Plaintiff to refile his complaint in state court should he decide to do so. The Clerk of Court is directed to close the case.

S/ Yvette Kane
Yvette Kane, Chief Judge
United States District Court
Middle District of Pennsylvania